

TITLE 195 – BOARD OF DENTISTRY
CHAPTER 3 – COMPLAINTS, INVESTIGATIONS AND HEARINGS

195:3-1-1.1 Definitions

The following words, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" or "**Dental Act**" means the State Dental Act, Title 59 O.S. §§ 328.1 et. seq. ~~thru 328.51(a).~~

"**Board**" means the Board of Dentistry.

"**Complaint**" means a written statement of complaint filed with the Board which is investigated or to be investigated by the Board and which may result in a formal Statement of Complaint in an individual proceeding filed pursuant to Article II of the Administrative Procedures Act.

"**Hearing**" means the trial mechanism employed by the Board in an individual proceeding.

"**Individual proceeding**" means the formal process by which the Board takes administrative action against a person licensed by the Board.

"**License**" means a license issued by the Board.

"**Parties**" means the respondent and the special prosecutor for the Board.

"**Principal Administrative Officer** **Executive Director**" ~~means the Principal Administrative Officer of the Board~~ shall be defined pursuant to 59 O.S. § 328.15(B).

"**Respondent**" means the person against whom an individual proceeding is initiated.

"**Review and investigative panel**" shall be defined by 59 O.S. § 328.43(a)

"**Staff**" means the personnel of the Board.

[Source: Added at 14 Ok Reg 1541, eff 7-1-97; Amended at 23 Ok Reg 1221, eff 7-1-06]

195:3-1-2. Investigations

~~(a) Any person may file a written and signed complaint with the Board alleging that another person has sought to practice or has illegally practiced dentistry or dental hygiene or has violated the Act or rules of the Board. The complaint need not be on any particular form but must be in writing and signed before it is presented to the Board representative for filing.~~

~~(b) Upon receipt of a complaint, the President of the Board shall appoint two Board members to act as a review panel during the investigation of the complaint. The review panel members shall not be from the same geographical region as that of the person named in the complaint or have a pecuniary interest in the outcome of the complaint. The review panel shall conduct or cause to be conducted an investigation and may utilize investigators and attorneys to conduct or assist in conducting the investigation. During the investigation, the review panel and investigators and attorneys may use any investigative mechanism authorized in the Act.~~

~~[Source: Amended at 14 Ok Reg 1541, eff 7-1-97; Amended at 20 Ok Reg 2338, eff 7-11-03; Amended at 23 Ok Reg 1221, eff 7-1-06]~~

195:3-1-3.1. Emergency hearing

In the event the investigative and review panel determines that an emergency exists for which immediate action on a license is warranted, including but not limited to suspension or revocation, the investigative and review panel shall so advise the President of the Board. Upon concurrence of the President of the Board, the President may convene a special or emergency hearing of the Board pursuant to the Administrative Procedures Act of the Oklahoma Statutes to summarily take action on such license. A written statement of the allegations constituting the emergency shall be provided to the Board as soon as practicable before the hearing. Notice of the hearing and the written statement of allegations constituting the emergency shall be provided to the respondent as soon as practicable before an emergency hearing of the Board.

[Source: Added at 23 Ok Reg 1221, eff 7-1-06]

195:3-1-4. Statement of Complaint and notice of hearing; Setting of hearing date

(a) The Statement of Complaint issued by the investigative review panel ~~Board~~ shall set forth all allegations of violations of the Act, proposed sanctions and requests for costs and attorneys' fees. The Statement of Complaint shall be prepared by the Executive Director or attorney who assisted in the investigation, or if no attorney assisted in the investigation, or by the attorney who will prosecute the respondent in a hearing before the Board.

(b) Upon the receipt of the statement of complaint, the Board President, shall serve as the Administrative Judge for the hearing with the assistance of judicial council. The statement of complaint shall be reviewed for sufficiency and he or she ~~At the time the Board accepts the recommendation of the review panel that an individual proceeding be commenced, with the assistance of the judicial counsel the Board shall set a hearing date.~~

(c) A "Notice of Hearing" shall be prepared by the ~~Principal Administrative Officer~~ Executive Director or the attorney assisting with the prosecution or acting as the prosecutor, and served on the respondent with the Statement of Complaint. The Notice of Hearing shall specify the time, place and nature of the hearing, the legal authority under which it is to be conducted and cite any relevant statutory provisions. Service of the Statement of Complaint and Notice of the Hearing may be in person or by certified mail at the official address as listed with the Board. Service of the Notice of the Hearing shall be complete upon return to the Board of a card showing receipt of certified mail by the respondent or return to the Board of an affidavit of personal service.

(d) For the purpose of all hearing matters, in the event of a conflict of the President, the acting board president shall serve as the administrative judge.

[Source: Amended at 14 Ok Reg 1541, eff 7-1-97; Amended at 20 Ok Reg 2338, eff 7-11-03; Amended at 23 Ok Reg 1221, eff 7-1-06]

195:3-1-4.1. ~~Matters prior to the hearing~~ Preliminary hearing matters, discovery and subpoenas.

(a) The President of the Board may delegate any ministerial duties to the judicial counsel who shall serve as the Administrative Law Judge for all preliminary matters.

(b) Attorneys representing Respondents shall file a formal entry of appearance with the Board and/or Administrative Law Judge.

(c) A scheduling order shall be issued by the Administrative Law Judge and
~~At the same time the respondent is served with the Statement of Complaint and notice of the hearing, the respondent and prosecuting attorney (parties) shall be served with a scheduling order.~~

~~The scheduling order shall be prepared by the attorney advising the Board and approved by the President of the Board. The scheduling order shall advise the parties of the closing date for the exchange of and filing of witness and exhibit lists, the discovery cut-off date, the cut-off date for the filing of dispositive motions and any other matters determined to be necessary. A prehearing conference date, set no less than fourteen (14) days prior to the hearing shall also be set in the scheduling order. Either party may file a written motion for modification of the scheduling order for good cause. The filing party must indicate whether the other party objects to the modification of the scheduling order.~~

~~(b)~~ (d) Either party may file a written motion for a change in the hearing date.. The motion shall state the amount of time desired and the reason or reasons for the request. The motion shall be filed no less than ten (10) ~~thirty (30)~~ working days before the date of the action for which the motion is filed.

~~(c) The President of the Board decide motions for modification of the scheduling order or for change in the hearing date for good cause shown by one of the parties.~~

~~and the Board may utilize the services of an attorney on all matters arising prior to the hearing.~~

[Source: Added at 14 Ok Reg 1541, eff 7-1-97; Amended at 23 Ok Reg 1221, eff 7-1-06]

195:3-1-5. Subpoenas and discovery

(a) The parties may make written requests to the Board for the issuance of Subpoena or Subpoena Duces Tecum to persons desired as witnesses for depositions or for the hearing, and such Subpoenas Duces Tecum for the production of documents for discovery or the hearing. Such subpoenas ~~shall~~ may be issued by the President of the Board, the Administrative Law Judge or the Executive Director in the name of the Board. The requestor shall furnish the names and addresses of all such witnesses. ~~The Principal Administrative officer is hereby authorized to receive requests for subpoenas and issue the same over the Principal Administrative Officer's signature with the same force and effect as if it were signed and issued by the president of the Board.~~

(b) Requests for admission, requests for the production of documents, requests for inspection of property and depositions shall be permitted prior to the hearing. Objections to discovery requests will be permitted as in civil actions in the State of Oklahoma. Any dispute to the discovery requests will be decided by the President of the Board Administrative Law Judge.

[Source: Amended at 14 Ok Reg 1541, eff 7-1-97; Amended at 23 Ok Reg 1221, eff 7-1-06]

195:3-1-5.1. Prehearing conference

~~(a) The scheduled prehearing conference may be held by telephone if agreed to by the parties or ordered by the President of the Board.~~

~~(b) The attorney advising the Board shall, in the absence of the President of the Board, preside at the prehearing conference.~~

~~(c) The purpose of the prehearing conference is to ensure that all prehearing matters have been addressed, that the issues to be addressed at the hearing have been identified, that all discovery has been completed and that all matters necessary for the conduct of an orderly hearing have been addressed.~~

~~(d) An estimated length of the hearing shall be provided by the parties to the President of the Board.~~

[Source: Added at 14 Ok Reg 1541, eff 7-1-97; Amended at 23 Ok Reg 1221, eff 7-1-06]

195:3-1-6. Procedure for hearings

(a) The hearing shall be conducted under the Administrative Procedures Act of the Oklahoma statutes and shall be presided over by the President of the Board, with the assistance of the judicial counsel, ~~or the Vice President in the absence of the President. In the event of the absence of of both the president and the Vice President,~~ the President shall designate a member of the Board to preside at the hearing in the case of absence or conflict. The rules of evidence used during the hearing shall be those specified by the Administrative Procedures Act. Witnesses shall be sworn upon oath and are subject to cross-examination. The President of the Board shall rule upon the admissibility of evidence or objections thereto, or upon other motions or objections arising in the hearing. The rulings of the President, in all questions, shall be the rulings of the Board unless reversed or modified by a majority vote of the Board.

(b) The Board may utilize the services and advice of the judicial counsel ~~its Attorney (serving as legal advisor)~~ regarding any matter of evidence, law, or procedure in the conduct of the hearing. All decisions concerning objections or procedure shall be made by the presiding Board member. A Board Attorney shall act as Special Prosecutor for the Board although any Board member may inquire of any witness concerning matters deemed relevant and competent and not otherwise offered into evidence.

(c) The Board shall admit and give probative effect all competent, relevant, and probative evidence, both oral and documentary, which tends to prove or disprove the allegations of the complaint. The board may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. The Board shall, insofar as possible, give effect to the fundamental rules of evidence recognized in courts of law. True copies of documents may be received if the original is unavailable. The Board is possessed of specialized knowledge, and such knowledge will be utilized along with all the evidence in arriving at a decision, when the complaint or investigation involves questions calling for such specialized knowledge. The standard of proof upon the Board in such hearing is by clear and convincing evidence.

(d) Whenever all the evidence has been presented, the respondent shall be afforded an opportunity to be heard in argument relative to the matters in issue.

[Source: Amended at 11 Ok Reg 2591, eff 7-1-94; Amended at 14 Ok Reg 1541, eff 7-1-97; Amended at 23 Ok Reg 1221, eff 7-1-06]

195:3-1-7. Issuance of final agency order

After all parties involved in the individual proceeding have concluded their presentation, the Board jury panel shall deliberate, in executive session if desired. The Board jury panel shall vote in open session whether the Act was violated by the respondent. The Board shall make findings of fact and conclusions of law if it determines that the respondent violated the Act. If the Board finds that the Act was violated, the Board shall deliberate, in executive session if desired, to determine what, if any, sanctions shall be imposed upon the respondent. A final agency order will be prepared later in written form and mailed or to respondent at his ~~last known office~~ official address as listed by the Board and/or their attorney. The final agency order shall include separately stated Findings of Fact and Conclusions of Law and if respondent is found guilty of violations of the State Dental Act or enters his admissions thereof, the final agency order shall include the sanction or sanctions assessed. Appeals from the decision of the Board may be taken as provided by law.

[Source: Amended at 14 Ok Reg 1541, eff 7-1-97; Amended at 23 Ok Reg 1221, eff 7-1-06]

195:3-1-8. Record of hearing

(a) A record of all hearings shall be made. The record may be made by means of electronic, digital or stenographic means whichever the presiding officer designates. A transcript of the proceeding shall not be prepared except upon written application. The party requesting the transcript shall pay for its costs. Parties to any proceeding may have the proceeding transcribed by a court reporter at their own expense.

(b) The record of the hearing and the file containing the pleadings, motions, final agency order and other administrative records will be maintained in a place designated by the ~~Principal Administrative Officer~~ Executive Director of the Board. The ~~tape~~ digital or other type of recording audio or video or transcript of the proceeding shall be maintained for a period of one year. If the matter is on appeal, these records will be maintained until all appeals have been finally exhausted.

(c) If the respondent desires a stenographic record at the hearing, he or she shall make arrangements for the court reporter to be present at the hearing. If the stenographic record is transcribed, a copy shall be provided to the other party and the Board at the respondent's expense.

[Source: Amended at 14 Ok Reg 1541, eff 7-1-97; Amended at 23 Ok Reg 1221, eff 7-1-06]

~~195:3-1-9. Petition for promulgation, amendment, or repeal of rules~~

~~—All interested persons may request the Board to promulgate, amend or repeal a rule, such request to be made in writing and filed with the Executive Secretary. The request shall set forth fully the reasons for its submission; the alleged need or necessity therefor; whether or not the proposal conflicts with any existing rule, and what, if any, statutory provisions are involved. Such request shall be considered by the Board at its next regular meeting or may be continued for further consideration to a subsequent meeting. Upon this preliminary consideration, if the Board approves the proposed change, notice will be given that at a subsequent Board meeting, such proposal will be formally considered for adoption. If however, the Board initially determines that the proposal or request is not a necessary rule, amendment or repeal, the same will be refused and the decision reflected in the regular minutes of the Board.~~